

## Women's Roles in Advancing International Religious Freedom

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The first step in advancing the role of women in advancing freedom of religion or belief is to address the common misperception that women's rights and freedom of religion or belief (FORB) are clashing rights.

Numerous reservations to the human rights of women and girls are asserted by States in the name of religion (usually a 'State religion') and religious laws. These religiously-phrased<sup>1</sup> reservations<sup>2</sup> and declarations are allegedly on the basis of 'religious' justifications<sup>3</sup> and there is "frequent invocation" of religious norms as "defense" in opposing "gender equality claims".<sup>4</sup> In the case of the CEDAW Convention, the reservations particularly relate to articles 2, 5(a) and 15, that is, relating to measures to eliminate discrimination, prejudices<sup>5</sup> and stereotypical practices against women, and ensuring equality before the law.<sup>6</sup>

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<sup>1</sup> The term 'religiously-phrased reservations' is used in order to indicate that there will be no theological assessment as to the religious legitimacy or necessity of such reservations by States Parties to CEDAW.

<sup>2</sup> CEDAW general recommendations no. 4 and no. 20. Article 28 of CEDAW deals with the reservations entered into by the State Parties and declares any reservation incompatible with the object and purpose of the Convention to be impermissible. "Reservation" is defined under Article 2 of Vienna Convention on the Law of Treaties. See <http://www.unicef.org/french/crc/files/Definitions.pdf>. See also <http://www.un.org/womenwatch/daw/cedaw/reservations.htm> and <http://www.un.org/womenwatch/daw/cedaw/reservations-country.htm>

<sup>3</sup> Basak Çali and Mariana Montoya observe some interesting methodological challenges to clarifying the parameters of this. See: *The March of Universality? Religion-Based Reservations to the core UN Treaties and What they tell us about Human Rights and Universality in the 21<sup>st</sup> Century*, Universal Rights Group, 2015, pp. 14-15

<sup>4</sup> Frances Raday, *Culture, religion and gender*, 1.4 I-CON, 2003, p. 665.

<sup>5</sup> General comment 28 of the UN Human Rights Committee calls on States parties to ensure that "traditional, historical, religious or cultural attitudes" do not serve as the basis of justifying "violations of women's right to equality before the law and to equal enjoyment of all Covenant rights", States should take measures to "overcome" such attitudes. CCPR/C/21/Rev.1/Add.10, general comment 28, para. 5.

<sup>6</sup> Article 2 outlines the range of measures that States Parties will take "through all appropriate means and without delay" to eliminate discrimination against women. Article 5(a) also determines that States Parties will take "all appropriate measures" in order to "modify the social and cultural patterns of conduct of men and women" in order to eliminate prejudices and "customary and other practices" based on "the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women". Article 15 addresses women's equality with men before the law. States are "misusing the argument of cultural or religious relativism to evade their responsibilities" regarding to women and girl's rights and their "equal personhood in both the private and public spheres". E/CN.4/2002/73/Add.2, *Study on freedom of religion or belief and the status of women in the light of religion and traditions*, para. 221; and A/HRC/43/48, *Gender-based violence and discrimination in the name of religion or belief*, para. 13.

These reservations and declarations not only restrict the rights of women and girls but also restrict a human rights understanding of FORB itself.<sup>7</sup> FORB, as a human right, “does not protect religions per se (e.g. traditions, values, identities and truth claims) but aims at the empowerment of human beings, as individuals and in community with others. This empowerment component is something which FORB has in common with all other human rights.”<sup>8</sup>

This right allows ‘everyone’ to come to an understanding their own religion, and to manifest their religion or belief in accordance with that understanding, whether in relation to personal status laws, religious dress, or other areas. FORB supports the individual to understand, interpret<sup>9</sup> and manifest their religion or belief in harmony with the respect of the dignity, integrity<sup>10</sup> and free volition of others. As the UN Special Rapporteur on freedom of religion or belief has emphasised, it is the “interpretations of those beliefs... which are not necessarily held by all members of a religious community, [that] are often the source of gender-based violence and discrimination”.<sup>11</sup> Manifestation of FORB can never serve as a legally legitimate justification for harmful practices<sup>12</sup> since these practices constitute a denial of

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<sup>7</sup> For detailed discussion see: Heiner Bielefeldt, Nazila Ghanea and Michael Wiener, *Freedom of Religion or Belief, An International Law Commentary*, Oxford: Oxford University Press, 2016. The normative standards upholding FORB are article 18 of Universal Declaration of Human Rights (UDHR), article 18 of the ICCPR, and the 1981 Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief. (Article 4 of the 1981 UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief states

“1. All States shall take effective measures to prevent and eliminate discrimination on the grounds of religion or belief in the recognition, exercise and enjoyment of human rights and fundamental freedoms in all fields of civil, economic, political, social and cultural life.

2. All States shall make all efforts to enact or rescind legislation where necessary to prohibit any such discrimination, and to take all appropriate measures to combat intolerance on the grounds of religion or other beliefs in this matter.”) These provisions make no mention of women’s equality or even of non-discrimination on the basis of sex. It took a decade into the annual FORB resolutions that the UN Commission and UN Human Rights Council adopted, for these resolutions to adopt explicit provisions since 1996. These resolutions have required the Special Rapporteur on FORB to adopt a gender perspective into his/her mandate only since 1996. (Michael Wiener, ‘Freedom of Religion or Belief and Sexuality – Tracing the evolution of the Special Rapporteur’s Mandate Practice over 30 years’, vol. 6 issue 2, *Oxford Journal of Law and Religion*, 2017)

<sup>8</sup> A/68/290, Report of the Special Rapporteur Heiner Bielefeldt on freedom of religion or belief, 2013, addressing the interplay of freedom of religion or belief and equality between men and women, para. 70.

<sup>9</sup> There is a vibrant literature here, by way of example around Muslim reformist thinking and Jewish family law. Publications in this area, for example, include the works of Abdullahi Ahmed An-Na’im, Mashood Baderin and Ayelet Shachar.

<sup>10</sup> CEDAW/C/GC/31/CRC/C/GC/18, Joint general recommendation/comment on harmful practices, para. 16.

<sup>11</sup> A/HRC/43/48, Gender-based violence and discrimination in the name of religion or belief, para. 39.

<sup>12</sup> A joint general recommendation by the CEDAW and CRC committees defines ‘harmful practices’ as practices which are “grounded in discrimination based on sex, gender and age, among other things”, often associated with “serious forms of violence” or constituting violence themselves and – critically– which have “often been justified by invoking sociocultural and religious customs and values”.

CEDAW/C/GC/31/CRC/C/GC/18, CEDAW and CRC, 2014, Joint general recommendation no. 31 of the

dignity and integrity. FORB is the right of everyone, whether alone or alongside others. It does not support us in forcing our religious laws on others, let alone on those who are unable “to provide, full, free and informed consent”.<sup>13</sup>

Harmful practices include female genital mutilation;<sup>14</sup> dowry-related violence;<sup>15</sup> female infanticide;<sup>16</sup> “domestic and other types of violence against women, including rape”,<sup>17</sup> “trafficking of women ... forced prostitution ... slavery”,<sup>18</sup> requiring a range of efforts to address them.<sup>19</sup>

Grave mass violations are when “armed groups invoke religion to justify atrocities such as targeted mass killings, extrajudicial and summary executions, enforced disappearances, torture, sexual violence, indiscriminate attacks against civilians, mass expulsions, enslavement or systematic destruction of certain communities”.<sup>20</sup> Instances include “‘honour’ killings, acid attacks, amputations, floggings, and other violent practices” against women and girls, or numerous other violent acts rendered invisible behind the ‘private sphere’.<sup>21</sup>

States should repeal all legislation that condones, allows or leads to harmful practices, including traditional, customary or religious laws and any legislation that accepts the defence of honour as a defence or mitigating factor in the commission of crimes;<sup>22</sup> take legislative and other appropriate measures to eradicate “all cultural or religious practices which jeopardize the freedom and well-being of female children”;<sup>23</sup> adopt and amend legislation in line with

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Committee on the Elimination of Discrimination against Women /general comment No. 18 of the Committee on the Rights of the Child on harmful practices, para. 7.

<sup>13</sup> CEDAW/C/GC/31/CRC/C/GC/18, Joint general recommendation/comment on harmful practices, para. 16.

<sup>14</sup> CCPR/C/21/Rev.1/Add.10, general comment no. 28, para. 11. Furthermore see: CEDAW/C/GC/14, CEDAW, 1990, general recommendation no. 14, Female Circumcision.

<sup>15</sup> CCPR/C/21/Rev.1/Add.10, general comment no. 28, para. 10.

<sup>16</sup> CCPR/C/21/Rev.1/Add.10, general comment no. 28, para. 10.

<sup>17</sup> CCPR/C/21/Rev.1/Add.10, general comment 28, para. 11. See also: CEDAW/C/GC/19, 1992, CEDAW general recommendation no. 19, violence against women, which defines gender-based violence as “a form of discrimination that seriously inhibits women’s ability to enjoy rights and freedoms on a basis of equality with men”, para. 1.

<sup>18</sup> CCPR/C/21/Rev.1/Add.10, general comment no. 28, para. 12.

<sup>19</sup> Horizontal coordination is that across sections: “including education, health, justice, social welfare, law enforcement, immigration and asylum and communications and media”; and vertical coordination is that “between actors at the local, regional and national levels and with traditional and religious authorities”.

CEDAW/C/GC/31/CRC/C/GC/18, Joint general recommendation/comment on harmful practices, para. 34.

<sup>20</sup> A/73/45410, Report of the UN Special Rapporteur on freedom of religion or belief, para. 31.

<sup>21</sup> A/73/45410, Report of the UN Special Rapporteur on freedom of religion or belief, para. 36.

<sup>22</sup> CEDAW/C/GC/31/CRC/C/GC/18, Joint general recommendation/comment on harmful practices, para. 55(c).

<sup>23</sup> CCPR/C/21/Rev.1/Add.10, Human Rights Committee, 2000, general comment no. 28, Equality of rights between men and women, para. 28.

international provisions, and ensure that such legislation “takes precedence over customary, traditional or religious laws that allow, condone or prescribe any harmful practice”.<sup>24</sup>

Religion is amongst the asserted grounds for these violations, yet “religion can also be a positive source of motivation and mobilisation in struggles for gender equality and non-discrimination. ... Religious actors and discourses can often play an important role. ... it is imperative to...openly explore the different roles that religion can play in relation to struggles for gender equality”.<sup>25</sup>

In its joint general recommendation/comment with the CRC on harmful practices CEDAW had already started to recognise the importance of a positive role for religious authorities<sup>26</sup> in contributing to the prevention of and protection from such practices. This understanding has expanded further in recent years through the platform of Faith for Rights.<sup>27</sup>

The Faith for Rights framework, initiated in March 2017 through the Beirut Declaration and its 18 commitments, encourages us to “leverage the spiritual and moral weight of religions and beliefs with the aim of strengthening the protection of universal human rights and developing preventative strategies”.<sup>28</sup> In addition to addressing non-discrimination, standing up for the rights of all including minorities, and denouncing advocacy of hatred, there is commitment V: “We pledge to ensure non-discrimination and gender equality ... We specifically commit to revisit ... those religious understandings and interpretations that appear to perpetuate gender inequality and harmful stereotypes or even condone gender-based violence. We ... affirm the right of all women, girls and boys not to be subjected to any form of discrimination and violence, including harmful practices such as female genital mutilation, child and/or forced marriages and crimes committed in the name of so-called honour.”<sup>29</sup>

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<sup>24</sup> CEDAW/C/GC/31/CRC/C/GC/18, Joint general recommendation/comment on harmful practices, para. 55(b).

<sup>25</sup> Marie Juul Peterson, Freedom of religion or belief and women’s rights, The Danish Institute of Human Rights, p. 9, available at [https://www.humanrights.dk/sites/humanrights.dk/files/media/document/Brief\\_no4\\_03%20FINAL-a.pdf](https://www.humanrights.dk/sites/humanrights.dk/files/media/document/Brief_no4_03%20FINAL-a.pdf)

<sup>26</sup> CEDAW/C/GC/31/CRC/C/GC/18, Joint general recommendation/comment on harmful practices, para. 34.

<sup>27</sup> <https://www.ohchr.org/EN/Issues/FreedomReligion/Pages/FaithForRights.aspx>

<sup>28</sup> See Faith for Rights 18 commitments, Commitment XVI, <https://www.ohchr.org/Documents/Press/21451/18CommitmentsonFaithforRights.pdf>

<sup>29</sup> See Faith for Rights 18 commitments, Commitment V, <https://www.ohchr.org/Documents/Press/21451/18CommitmentsonFaithforRights.pdf>

2017 become the turning point for CEDAW in starting to more rigorously and consistently demand explanations from States that sought to justify violations of women’s rights in the name of religion. CEDAW Committee members have since utilised the Faith for Rights framework to elaborate and underscore the responsibilities of the State and reject the ‘religious cultural defence’. CEDAW Committee’s recommendations have called for the need to “reconsider religious interpretations that appeared to perpetuate gender inequality and harmful stereotypes”<sup>30</sup> and “to combat deeply rooted patriarchal cultural and religious norms” for example in relation to domestic violence.<sup>31</sup> CEDAW has also called on States to “promote a better understanding of the relationship between faith and the realization of human rights”,<sup>32</sup> “encourage different faith communities to work together to promote human rights”,<sup>33</sup> break down gender stereotypes and change such mentalities by establishing “[s]trong partnerships with cultural and religious leaders”<sup>34</sup> and by including religious leaders when “addressing issues of faith and human rights”;<sup>35</sup> have dialogues with “representatives of faith groups concerning human rights”,<sup>36</sup> and fully involve religious leaders for example when seeking to eradicate polygamy.<sup>37</sup>

We should all follow their example and not remain silent in the face of such justificatory efforts, whatever our standing, and at every level of society. That is a first step in allowing women to play their role in advancing freedom of religion or belief for all.

In seeking to revisit FORB and women’s rights, it is heartening to observe the advances made over the past five years.<sup>38</sup> When the USCIRF publication *Women and Religious Freedom: Synergies and Opportunities* came out,<sup>39</sup> my expectation was that within the UN human

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<sup>30</sup> CEDAW/C/SR.1516, Summary record of consideration of State party report of Niger, para. 27

<sup>31</sup> CEDAW/C/SR.1578, Summary record of consideration of State party report of Fiji, para. 37

<sup>32</sup> CEDAW/C/SR.1508, Summary record of consideration of State party report of Costa Rica, para. 20

<sup>33</sup> CEDAW/C/SR.1518, Summary record of consideration of State party report of Nigeria, para. 16

<sup>34</sup> CEDAW/C/SR.1578, Summary record of consideration of State party report of Fiji, para. 3

<sup>35</sup> CEDAW/C/NGA/CO/7-8, Concluding observations of CEDAW with regards to State party report of Nigeria, para. 12

<sup>36</sup> CEDAW/C/SR.1578, Summary record of consideration of State party report of Fiji, para.62

<sup>37</sup> CEDAW/C/NGA/CO/7-8, Concluding observations of CEDAW with regards to State party report of Nigeria, para. 46

<sup>38</sup> The past five years, since 2017, refers to the fact that this article is amended, altered and updated from an earlier publication: Nazila Ghanea, *Women and Religious Freedom: Synergies and Opportunities*, US Commission on International Religious Freedom, 2017, available at <https://www.uscirf.gov/sites/default/files/WomenandReligiousFreedom.pdf>

<sup>39</sup> Nazila Ghanea, *Women and Religious Freedom: Synergies and Opportunities*, US Commission on International Religious Freedom, 2017, available at <https://www.uscirf.gov/sites/default/files/WomenandReligiousFreedom.pdf>

rights treaty system the UN Human Rights Committee would take the lead in stepping up underscoring the interrelatedness of these rights in its dialogue with States. What has been realised, however, has been that CEDAW has taken the early lead on such integration. There has also been an exponential rise in initiatives, efforts and actors that have engaged on this topic. We are no longer accepting the rights of women and girls and freedom of religion or belief as being at loggerheads against one another and, if we approach the matter with fairness and integrity, that can only benefit all the rights and rights holders concerned.

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